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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,230	06/30/2003	Yaron Sar-Shalom	Q75969	1761

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OHLANDT, GREELEY, RUGGIERO & PERLE, LLP  
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STAMFORD, CT 06901

EXAMINER
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BRUCKART, BENJAMIN R

ART UNIT	PAPER NUMBER
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2446

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10/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/608,230	<b>Applicant(s)</b> SAR-SHALOM, YARON	
	<b>Examiner</b> BENJAMIN R. BRUCKART	<b>Art Unit</b> 2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 10-14, 16, 18-20, 22-33, 37, 38 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10-14, 16, 18-20, 22-33, 37, 38 and 40-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Claims 1-3, 10-14, 16, 18-20, 22-33, 37-38, 40-52 are presented for examination; claims 1, 22, 32, 46 and 51 independent.

Claims 4-9, 15, 17, 21, 34-36, 39 are cancelled.

Claims 1-3, 10-14, 16, 18-20, 22-33, 37-38, 40-46, 51 are amended.

The examiner draws applicant's attention to the new examiner of record in the case. See new correspondence information presented below.

### **Response to Arguments**

Applicant's arguments filed in the amendment filed 8/31/09, have been fully considered but are moot in view of new grounds of rejection. The reasons set forth below.

### **Applicant's invention as claimed:**

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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**Claims 1-3, 10-14, 16, 18-19, 22-33, 37-38, 40-44, 46-52 are rejected under 35 U.S.C. 102(e) as being unpatentable by U.S. Patent Publication No. 2003/0193961 by Moore et al.**

Regarding claim 1, an apparatus (Fig. 1) comprising:

- a communication device (Fig. 1);
- an availability detector, that detects availability of a destination device when a call is placed from said communication device to said destination device (Moore: page 5, para 66-67);
- and
- a messaging client that, when said availability detector indicates that said destination device is unavailable (Moore: page 5, para 66-67):
  - obtains addressing information of said destination device (Moore: page 16, lines 179);
  - generates a message on said communication device (Moore: page 16, para 180-184); and
  - sends said message via said communication device to said destination device in accordance with said addressing information, upon receipt of a command from a user of said communication device (Moore: page 16, 17, para 184, 186, 187).

Referring to claim 2, the communication device comprises a telephony device (para 13).

Referring to claim 3, the apparatus according to claim 1, further comprising a messaging initiator, wherein said messaging initiator is operable to provide said addressing information to said messaging client (page 5, para 66-67; caller).

Referring to claim 10, the apparatus according to claim 1, wherein said messaging client is operable to provide said addressing information in a destination field of said message (para 133).

Referring to claim 11, the apparatus according to claim 1, wherein said messaging client is operable to display a message content input screen on said communication device (para 232-233).

Referring to claim 12, the apparatus according to claim 1, wherein said message comprises one of a group of message types comprising voice message, short message, enhanced message and multimedia message (Moore: page 16, 17, para 184, 186, 187).

Referring to claim 13, the apparatus according to claim 1, wherein said message has content that comprises one of a group comprising text, audio, video, still image, multimedia and voice (Moore: page 16, 17, para 184, 186, 187).

Referring to claim 14, the apparatus of claim 1, wherein said message has a content that comprises a default message content (Moore: pages 17-18, para 17-200; text msg or voice message).

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Referring to claim 16, the apparatus of claim 14, wherein said default message can be specified by a user of said communication device (Moore: pages 17-18, para 17-200; user selects voice message or text message).

Referring to claim 18, the apparatus of claim 1, wherein said availability detector is operable to detect unavailability of said destination device when said destination device does not connect after a predetermined number of rings (Moore: para 222).

Referring to claim 19, the apparatus according to claim 1, wherein said availability detector is operable to detect unavailability of said destination device when a busy signal is received from said destination device (Moore: para 222).

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 20 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable by U.S. Patent Publication No. 2003/0193961 by Moore et al.**

Referring to claim 20, the Moore reference teaches the apparatus according to claim 1.

The Moore reference fails to teach a voicemail box.

However, by this rationale, "Official Notice" is taken that both the concepts and advantages of "detecting unavailability of said destination device when a connection is made to a voicemail box of said destination device" is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art to modify the system of Moore to include detecting of leaving a voicemail box in order to determine unavailability of the called party as explained through similar means in Moore para 222.

Claims 22-52 are rejected for similar reasons as stated above.

### **REMARKS**

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Applicant has presented amendments the independent claims. The examiner maintains the rejections, see remarks below.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R. Bruckart whose telephone number is (571) 272-3982. The examiner can normally be reached on 9:00-5:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin R Bruckart  
Examiner  
Art Unit 2446

/Benjamin R Bruckart/  
Primary Examiner, Art Unit 2446